CORRECTED

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 29

DOMSEY TRADING CORPORATION,
DOMSEY FIBER CORPORATION AND
DOMSEY INTERNATIONAL SALES
CORPORATION, A SINGLE EMPLOYER,
Respondents

ARTHUR SALM and FORTUNA EDERY, individually and as Executrix of the Estate of Albert Edery, deceased Additional Respondents

| and | Case Nos. | |
|---------------------------------|-----------|-------------|
| | | 29-CA-14619 |
| | | 29-CA-14681 |
| INTERNATIONAL LADIES' GARMENT | | 29-CA-14735 |
| WORKERS' UNION, AFL-CIO | | 29-CA-14845 |
| | | 29-CA-14853 |
| LOCAL 99, INTERNATIONAL LADIES' | | 29-CA-14896 |
| GARMENT WORKERS' UNION | | 29-CA-14983 |
| | | 29-CA-15012 |
| | | 29-CA-15119 |
| | | 29-CA-15124 |
| | | 29-CA-15137 |
| | | 29-CA-15147 |
| | | 29-CA-15323 |
| | | 29-CA-15324 |
| | | 29-CA-15325 |
| | | 29-CA-15332 |
| | | 29-CA-15393 |
| | | 29-CA-15413 |
| | | 29-CA-15447 |
| | | 29-CA-15685 |

COUNSEL FOR THE ACTING GENERAL COUNSEL'S EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S THIRD SUPPLEMENTAL DECISION

Administrative Law Judge Raymond P. Green issued a Third Supplemental Decision in the above-captioned matter on February 14, 2011, wherein he found that the corporate veil of Domsey Trading Corporation, ("DT") should not be pierced to hold its shareholder Arthur Salm personally and derivatively liable to satisfy DT's remedial obligations to the Board. Counsel for the Acting General Counsel takes exception to certain findings of fact and conclusions of law set forth in his decision.

Specifically, pursuant to Section 102.46 of the Rules and Regulations of the National Labor Relations Board - Series 8, as amended, Counsel for the Acting General Counsel takes exception to the administrative law judge's findings and conclusions as follows:

- 1. The administrative law judge ("ALJ") erred in failing to find that DT's corporate veil should be pierced, and Arthur Salm be found personally liable, under federal common law. Third Supplemental Decision ("Decision") at p.11, lines 2 4.
- 2. The ALJ erred in finding that General Counsel presented evidence as to only one element of *White Oak Coal*¹. Decision at pg.9, lines 16-21, 29-30, p. 10, fn.12.
- 3. The ALJ erred in failing to find that the commingling element under *White Oak Coal* has been satisfied. Decision at p. 9, lines 16-21; 29-35.
- 4. The ALJ erred in crediting the testimony of Domsey's accountant Richard Mole. Decision at p. 9, lines 30 -35.
- 5. The ALJ erred in failing to find that the following factors under White Oak Coal have been satisfied: (1) operating as a separate entity; (2) commingling of funds and other assets; (3) the failure to maintain adequate corporate records; (5) undercapitalization;

¹ White Oak Coal Co., 318 NLRB 732 (1995), enfd., 81 F.3d 150 (4th Cir. 1996).

- (6) use of corporate form as a mere shell; (8) diversion of corporate funds or assets to noncorporate purposes and (9) transfer or disposal of corporate assets without fair consideration. Decision at p.9, lines 29-30, 43-45; p. 10, lines 10-12; p. 11, lines 2-4.
- 6. The ALJ erred in finding that the trust fund doctrine of piercing the corporate veil was:
 - a. an alternate theory. Decision at p.10, lines 14 31;
 - b. raised post hearing. Decision at p.10, lines 26 31.
- 7. The ALJ erred in finding that the theory of pre-emption precludes consideration of New York Law regarding shareholder derivative liability when a corporation has dissolved. Decision at p.10, lines 33 43.
- 8. The administrative law judge erred in failing to find that Arthur Salm was an alter ego of DT as alleged in paragraph 13 (b) of the Notice of Hearing.
- 9. The ALJ erred in failing to find that the corporate veil could be pierced, and Arthur Salm found personally liable, under alternative theories, including state and federal law.
- 10. The ALJ erred in failing to find that, based on Domsey's failure to file an Answer, all allegations detailed in the Notice of Hearing with respect to Domsey are admitted.
- 11. The ALJ erred in rejecting General Cousel Exhibit 14.
- 12. The ALJ erred in failing to admit post-hearing Exhibit GC 16.
- 13. The ALJ erred in finding that General Counsel "produced no evidence to contradict the testimony of the Respondent's CPA that the corporate entities were adequately funded ...[and] maintained adequate ... corporate books and records." Decision at p. 9, lines 30-34.

The specific grounds and authorities for these exceptions are set forth in the attached brief.

Respectfully submitted,

Aggie Kapelman >

Counsel for the Acting General Counsel

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Region 29

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Counsel for the Acting General Counsel

National Labor Relations Board

Region 29

Dated this 4th day of April, 2011